



## Senate

General Assembly

**File No. 266**

January Session, 2013

Substitute Senate Bill No. 971

*Senate, April 2, 2013*

The Committee on Banks reported through SEN. LEONE of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

### ***AN ACT CONCERNING A MODERN METHOD OF FORECLOSURE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 49-24 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2013*):

3 All liens and mortgages affecting real property may, on the written  
4 motion of any party to any suit relating thereto, be foreclosed by (1) a  
5 decree of sale instead of a strict foreclosure at the discretion of the  
6 court before which the foreclosure proceedings are pending, or (2) if  
7 the property affected is real property containing any building or  
8 structure that is the principal residence of the mortgagor and that is  
9 occupied or intended to be occupied by not more than four families, a  
10 decree of market sale in accordance with the provisions of section 2 of  
11 this act and sections 49-26 and 49-27, as amended by this act.

12 Sec. 2. (NEW) (*Effective October 1, 2013*) (a) Any party to a  
13 foreclosure action may file a motion for a foreclosure by market sale.  
14 Such motion shall include the moving party's proposed marketing

15 plan to market the property. The court, if it approves the marketing  
16 plan, shall grant such motion and issue a decree fixing a date, not  
17 earlier than one hundred twenty days from the date of granting such  
18 motion, for the receipt by the mortgagor, as defined in section 49-8a of  
19 the general statutes, of a written offer to purchase the property being  
20 foreclosed. A proposed marketing plan (1) may include listing the  
21 property for sale with a person licensed under chapter 392 of the  
22 general statutes, provided such plan includes the proposed  
23 compensation to be paid to such person, (2) shall describe the  
24 advertisement to be performed for purposes of marketing the property  
25 and the proposed cost of such advertisement, (3) shall require that all  
26 offers received by the mortgagor be provided to the court as soon as  
27 possible after such offers have been received and prior to the date the  
28 court fixes for the presentation of an offer to the court and be subject to  
29 the approval of the court, and (4) shall include a copy of a certified  
30 appraisal of the property to be performed by the mortgagee.

31 (b) Upon the receipt of a written offer, the court, after a hearing,  
32 shall determine whether it is in the best interests of the parties to the  
33 foreclosure to approve such offer. The court shall not reject an offer  
34 solely on the basis that the offer contains contingencies for mortgage  
35 financing or building or other inspections of the property but may  
36 consider the absence of contingencies to an offer in deciding which of  
37 several competing offers is in the best interests of the parties. The court  
38 may extend the deadline for the receipt or presentation of an offer set  
39 in accordance with subsection (a) of this section upon a finding of good  
40 cause shown which includes, but is not limited to, allowing an offeror  
41 a reasonable time to meet contingencies set forth in an offer.

42 (c) If no offers are received or are acceptable to the court by the set  
43 date fixed for the receipt or presentation of an offer in accordance with  
44 subsection (a) of this section, the court may extend such date or issue a  
45 decree of sale in accordance with section 49-24 of the general statutes,  
46 as amended by this act, or a decree of strict foreclosure.

47 (d) If the court approves an offer, it shall issue a decree ordering a

48 sale date not earlier than forty-five days following the date of such  
49 decree by which the offeror shall complete the sale, which date may be  
50 extended for good cause shown upon the order of the court. The court  
51 shall determine and approve the payment of conveyance taxes,  
52 encumbrances having priority over the interests to be foreclosed,  
53 marketing expenses, including compensation to persons licensed  
54 pursuant to chapter 392 of the general statutes, recording fees and  
55 reasonable attorney's fees for the attorney closing the sale for the seller,  
56 to be paid from the closing proceeds on the date of closing.

57 Sec. 3. Section 49-26 of the general statutes is repealed and the  
58 following is substituted in lieu thereof (*Effective October 1, 2013*):

59 When a sale has been made pursuant to a judgment therefor and  
60 ratified by the court, a conveyance of the property sold shall be  
61 executed by the person appointed to make the sale, or, in the event of a  
62 foreclosure by market sale, by the mortgagors, which conveyance shall  
63 vest in the purchaser the same estate that would have vested in the  
64 mortgagee or lienholder if the mortgage or lien had been foreclosed by  
65 strict foreclosure, and to this extent such conveyance shall be valid  
66 against all parties to the cause and their privies, but against no other  
67 persons. The court, at the time of or after ratification of the sale, may  
68 order possession of the property sold to be delivered to the purchaser  
69 and may issue an execution of ejectment after the time for appeal of the  
70 ratification of the sale has expired.

71 Sec. 4. Section 49-27 of the general statutes is repealed and the  
72 following is substituted in lieu thereof (*Effective October 1, 2013*):

73 The proceeds of each such sale or, in the event of a foreclosure by  
74 market sale, the proceeds of such market sale less any expenses for  
75 marketing and sale approved in accordance with section 2 of this act,  
76 shall be brought into court, there to be applied if the sale is ratified, in  
77 accordance with the provisions of a supplemental judgment then to be  
78 rendered in the cause, specifying the parties who are entitled to the  
79 same and the amount to which each is entitled. If any part of the debt  
80 or obligation secured by the mortgage or lien foreclosed or by any

81 subsequent mortgage or lien was not payable at the date of the  
82 judgment of foreclosure, it shall nevertheless be paid as far as may be  
83 out of the proceeds of the sale as if due and payable, with rebate of  
84 interest where the debt was payable without interest, provided, if the  
85 plaintiff is the purchaser at any such sale, he shall be required to bring  
86 into court only so much of the proceeds as exceed the amount due  
87 upon his judgment debt, interest and costs.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	49-24
Sec. 2	<i>October 1, 2013</i>	New section
Sec. 3	<i>October 1, 2013</i>	49-26
Sec. 4	<i>October 1, 2013</i>	49-27

Section 1	<i>October 1, 2013</i>	49-24
Sec. 2	<i>October 1, 2013</i>	New section
Sec. 3	<i>October 1, 2013</i>	49-26
Sec. 4	<i>October 1, 2013</i>	49-27

**BA**            *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

**Explanation**

The bill concerns transactions between private entities and individuals and results in no fiscal impact to the Department of Banking.

**The Out Years**

**State Impact:** None

**Municipal Impact:** None

**OLR Bill Analysis****sSB 971*****AN ACT CONCERNING A MODERN METHOD OF FORECLOSURE.*****SUMMARY:**

By law, in a foreclosure proceeding involving real property, the court may issue a decree of sale or a strict foreclosure. This bill adds an additional option, foreclosure by market sale, which is a court-approved sale on the open market. This bill limits this option to one-to-four family residential real property that is the mortgagor's principal residence.

The bill allows any party to a foreclosure action to file a motion for a foreclosure by market sale and requires that the motion include a proposed marketing plan to be approved by the court. The property must be marketed for at least 120 days from the date of approval.

The bill specifies how offers can be made and approved by the court.

The bill requires the court to set a sale date at least 45 days from the date of approval of an offer. It requires that the sales proceeds be brought to court to determine the amount to which each party is entitled. It also requires the court to determine and approve the payment of certain expenses, including marketing and sales expenses. It specifies that in a foreclosure by market sale, the mortgagor must convey title to the purchaser.

EFFECTIVE DATE: October 1, 2013

**FORECLOSURE BY MARKET SALE*****Proposed Marketing Plan***

A motion for a foreclosure by market sale must include a proposed

marketing plan for court approval. A proposed marketing plan:

1. may include listing the property for sale with a real estate broker or real estate salesperson if their proposed compensation is also included,
2. must describe the planned advertisement as well as the proposed cost,
3. must require that offers are provided as soon as possible and presented for court-approval before the fixed date, and
4. must include a copy of a certified appraisal of the property to be performed by the mortgagee.

If the court approves the plan, the property must be marketed for at least 120 days from the date of approval.

### ***Written Offers***

The bill requires offers to be in writing and requires the court to have a hearing to determine approval if the offer received is in the best interest of the parties to the foreclosure. The court may not reject an offer solely because it contains contingencies for financing or inspections of the property. But, the absence of contingencies to an offer may be considered in deciding which of several competing offers is in the parties' best interests.

The court may extend the deadline for offers for good cause, such as allowing reasonable time for a person who has made an offer to meet the contingencies in the offer.

If no acceptable offer is received by the fixed date, the court may extend the marketing period or revert to one of the foreclosure options available under current law - issue a decree of sale or a decree of strict foreclosure (see BACKGROUND).

### ***Sale and Conveyance of Title***

The bill requires the court to set a sale date which must be at least 45

days after the sale has been ordered. The court may extend the deadline for good cause.

The sales proceeds must be brought into court to determine the amount to which each party is entitled. The court must approve the payment of conveyance taxes, encumbrances having priority over the interests to be foreclosed, marketing and sale expenses such as real estate broker or salesperson compensation, recording fees and reasonable attorney's fees for the seller's attorney to be paid on the date of closing.

The bill specifies that in a foreclosure by market sale, the mortgagor must transfer title to the purchaser.

## **BACKGROUND**

### ***Foreclosure by Sale***

With a decree of sale, the court (1) establishes the time and manner of the sale, (2) appoints a committee to sell the property, and (3) appoints three appraisers to determine the value of the property. The borrower may stop the foreclosure proceedings at any time before the sale by paying the balance due on the mortgage. If no such payment is made, the committee will go forward with the sale. The lender may sue to obtain a deficiency judgment.

### ***Strict Foreclosure***

With strict foreclosure, no actual foreclosure sale is held. Instead, the lender goes to court to try and obtain a court order demonstrating the borrower is in default of the mortgage. If successful, the title transfers to the lender immediately. However, the court sets an established amount of time in which the borrower may redeem the property, but if he or she fails to do so, the title becomes absolute to the lender and the borrower no longer has any claim to the property. The lender then has 30 days to record a certificate of foreclosure, which must contain a description of the property, the foreclosure proceedings, the mortgage and the date the title became absolute.

## **COMMITTEE ACTION**

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## Banks Committee

Joint Favorable Substitute

Yea 15 Nay 2 (03/14/2013)